



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

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www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

CERTIFIED MAIL

June 30, 2010

Robert E. Murray
Director
The Ohio Valley Coal Company
56854 Pleasant Ridge Road
Alledonia, Ohio 43902

**RE: Proposed Director's Final Findings and Orders
The Ohio Valley Coal Company – Powhatan No. 6 Mine**

Dear Mr. Murray:

Staff of the Ohio Environmental Protection Agency (EPA), Division of Surface Water, have informed me that The Ohio Valley Coal Company has violated its National Pollutant Discharge Elimination System (NPDES) permit and Ohio Revised Code (ORC) Chapter 6111., by discharges in excess of effluent limitations, and unpermitted discharges of wastewater to waters of the state at Powhatan No. 6 Mine. As a result of these violations, I have decided that enforcement action is necessary to both address the violations and deter future violations. I am optimistic that we can resolve this matter amicably and expeditiously through negotiated Findings and Orders. Such a resolution would avoid the expense and time associated with litigation upon referral to the Ohio Attorney General. I request that you promptly address this matter.

Enclosed are proposed Director's Final Findings and Orders which describe the alleged violations in greater detail, require that The Ohio Valley Coal Company take certain actions for their resolution, and require payment of a civil penalty. Please be advised that if you should decide not to enter into Director's Final Findings and Orders with Ohio EPA, this offer will be withdrawn, and I will consider other legal enforcement options to address these violations, including referral of this matter to the Ohio Attorney General.

Please review the attached document carefully. We request that you contact Martha Horvitz of the Ohio EPA legal staff at (614) 644-3037 within fourteen (14) days if you wish to propose specific changes to the Director's Final Findings and Orders, or to schedule a meeting to discuss the matter in greater detail, including the amount of the civil penalty.

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

Robert E. Murray
The Ohio Valley Coal Company
Proposed Director's Final Findings and Orders
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A guide to the administrative enforcement process within Ohio EPA's Division of Surface Water has also been enclosed. It provides brief answers to some questions that are frequently asked by parties involved in the administrative enforcement process. If you have additional questions not answered by the guide, please contact Ms. Horvitz.

Because this correspondence and enclosure summarize a proposal for a settlement, if this offer is declined I consider it to be inadmissible by you for any purpose in any action that may be taken by the state of Ohio.

Your prompt attention to this matter is requested and appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read "C. Korleski", written in a cursive style.

Chris Korleski
Director

cc: Larry Reeder, DSW (w/encl.)
Abbot Stevenson, DSW, SEDO (w/encl.)
Martha Horvitz, Legal (w/encl.)

Enclosures

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

The Ohio Valley Coal Company	:	Director's Final
56854 Pleasant Ridge Road	:	Findings and Orders
Allondonia, Ohio 43902	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to The Ohio Valley Coal Company ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of Respondent or the Facility (as hereinafter defined) shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent is the owner and operator of the Powhatan No. 6 Mine, an underground coal mining operation located at 56854 Pleasant Ridge Road, Allondonia, Belmont County, Ohio ("Facility").
2. Respondent holds an expired National Pollutant Discharge Elimination System ("NPDES") permit, No. 0IL00046*DD. The permit became effective on July 1, 2000 and expired on June 30, 2005.

3. Pursuant to Ohio Administrative Code ("OAC") 3745-33-04, all NPDES permit renewal applications must be submitted within one hundred and eighty days prior to expiration of the permit. Respondent's application was submitted June 24, 2005, six days before its NPDES permit expired. As Respondent failed to file a timely application, it has been operating without a legally effective permit since July 1, 2005. However, Respondent has been operating as if the terms and conditions of its expired NPDES permit remain in effect.
4. The permit authorized Respondent to discharge "industrial waste" and/or "other waste" and/or "sewage," as defined in ORC § 6111.01, from the Facility to Perkins Run or Captina Creek from the following outfalls:
 - A discharge from Powhatan No. 6 Mine of process water from the preparation plant and storm water runoff from slurry impoundment #2 into Perkins Run from outfall 001;
 - Sanitary wastewater from outfall 002;
 - Beltline area treatment pond #8 from outfall 007;
 - Railroad coal handling area treatment pond #7 from outfall 011;
 - Refuse disposal area/slurry impoundment dam/fly ash runoff and leachate collection pond (and effluent from pond #014 when constructed) from outfall 013.
5. Perkins Run is a tributary of Captina Creek which flows into the Ohio River. Perkins Run, Captina Creek, and the Ohio River are "waters of the state" as that term is defined in ORC § 6111.01. Captina Creek is classified as an exceptional warmwater habitat stream in Ohio Administrative Code ("OAC") 3745-1-13, Table 13-1, and is classified as an outstanding state water in OAC 3745-1-05(A)(10)(c).
6. Respondent has, on at least the dates listed in the chart attached hereto as Attachment I and incorporated by reference as if fully rewritten herein, exceeded final effluent limitations in its NPDES permit from January 2005 through February 2010. Respondent's failure to comply with the final effluent limitations in its NPDES permit is a violation of the permit and ORC §§ 6111.04 and 6111.07. Each violation cited on Attachment I constitutes a separate violation.
7. Respondent violated Part I,A.2. of its NPDES permit by failing to monitor the discharge from slurry impoundment #2, outfall 001, once per week during the third and fourth weeks of January 2008, and from February 7 through February 28, 2008.

8. Pursuant to Part I, C. of Respondent's NPDES permit, Respondent was required to install a flow meter and composite sampler capable of automatically collecting samples over a 24 hour period proportionate to the wastewater flow from slurry impoundment #2, outfall 001, in accordance with a schedule of compliance, and to complete construction and place the flow meter and composite sampler in operation as soon as possible but no later than July 1, 2001.
9. In late January 2007, Respondent notified Ohio EPA that it intended to move outfall 001, and would move the sampler and flow monitor also, noting in a February 6, 2007 email to Ohio EPA that "[w]e won't miss any discharge" in making this move. In a June 21, 2007 email to Ohio EPA, Respondent stated that "[w]e . . . need to move the sampling/monitoring building by the end of June."
10. Outfall 001 was moved in August 2007, but the composite sampler and flow meter were not re-installed at the new location until after the slurry discharge on February 28, 2008 described in Finding No. 11. The failure to install the composite sampler and flow meter at the time outfall 001 was moved in August 2007 until after February 28, 2008 is a violation of the terms and conditions of Respondent's NPDES permit.
11. Pursuant to ORC § 6111.04(C), no person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit.
12. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.
13. On February 28, 2008, Respondent discharged coal slurry from the #2 slurry impoundment, NPDES permit outfall 001, into Perkins Run, Captina Creek and the Ohio River. The discharge occurred overnight during the decanting of water from the impoundment. Ohio EPA personnel observed that Captina Creek was turned black by the discharge. The discoloration lasted for at least 3 days and was noticeable for 22 miles downstream to the Ohio River.
14. The February 28, 2008 slurry discharge violated water quality standards in OAC 3745-1-04(A) and (C), and ORC §§ 6111.04 and 6111.07.
15. Ohio EPA received a letter from Respondent's counsel, dated March 3, 2008, which provided preliminary information on the cause of the slurry discharge from outfall 001. The letter also indicated that measures were being taken to prevent a future occurrence, including the installation of required monitoring and sampling equipment,

raising the level of the dike immediately around the decant pipe, and cleaning some slurry from the ditch to minimize movement downstream when pumping is restarted.

16. On March 21, 2008, Ohio EPA sent Respondent a Notice of Violation ("NOV") for the February 28, 2008 discharge of coal slurry to Perkins Run and Captina Creek. The NOV stated that Respondent: violated Part III, 2.A and C of Respondent's NPDES permit by depositing putrescent or otherwise objectionable sludge deposits into waters of the State and discharging effluent containing substances that altered the natural color of the receiving streams; and violated its NPDES permit by failing to monitor the discharge from slurry impoundment #2, NPDES permit outfall 001, from February 7 to February 28, 2008 in accordance with its NPDES permit. The NOV also requested additional information required by the NPDES permit reporting requirements for noncompliance notification.
17. On April 4, 2008, Ohio EPA received a letter from Respondent providing the additional information requested in the March 21, 2008 NOV. The laboratory analysis of Respondent's water quality sample in Captina Creek downstream of outfall 001 indicated a violation of the NPDES permit effluent limitation for Total Suspended Solids. See Attachment II.
18. On March 5, 2008, Ohio EPA conducted a Compliance Sampling Inspection at Respondent's Powhatan No. 6 Mine. A report detailing the results of the inspection was sent to Respondent in a letter dated April 14, 2008. The letter listed several violations including, but not limited to, NPDES permit violations of effluent limitations for total iron and total manganese from pond #13, outfall 013, on the day of the inspection; NPDES permit violations of effluent limitations for CBOD5 from outfall 002 for the month of October 2007; delay in the installation of the sampler and flow meter on the new discharge location for outfall 001; failure to sample the #2 slurry impoundment discharge during the months of January and February 2008 as required by the NPDES permit; and, an unpermitted discharge of pollutants to Captina Creek in violation of ORC § 6111.04 as a result of coal fines being dragged out onto State Route 148.
19. A response to Ohio EPA's April 14, 2008 compliance inspection letter was received from Respondent on May 12, 2008.
20. In addition to the February 28, 2008 slurry release, on at least July 10, 2007, January 2, 2006, August 1, 2004, April 22, 2000, and July 8, 1999, citizens of the area reported releases of black waters into Captina Creek from Respondent's Facility to Ohio EPA. Respondent did not report these releases as required by its NPDES permit. In addition, there was one release on August 8, 2004 that Respondent reported by letter to Ohio EPA on August 13, 2004.

21. On July 30, 2007, Ohio EPA sent Respondent an NOV regarding the July 10, 2007 release. The July 30, 2007 NOV cited violations of general effluent limitations and reporting requirements in Respondent's NPDES Permit, Parts III, 2. A. and C., and Part III, 12, and water quality standards in OAC 3745-1-04(A) and (C).
22. On August 26, 2004, EPA sent Respondent an NOV regarding the August 1, 2004 release. The August 26, 2004 NOV cited violations of water quality standards in OAC 3745-1-04(A) and (C), effluent limitations in Respondent's NPDES permit for total suspended solids from outfall 001, reporting requirements in Respondent's NPDES Permit, Part III, 12.A and Part III, 12.B, and ORC Chapter 6111.
23. On May 9, 2000, EPA sent Respondent an NOV regarding the April 22, 2000 release. The May 9, 2000 NOV cited violations of water quality standards in OAC 3745-1-04(A) and (C), Respondent's NPDES Permit and ORC 6111.
24. Respondent sent letters to Ohio EPA responding to the NOV's on August 4, 2007, January 9, 2006, August 13, 2004, and May 16, 2000. In the August 4, 2007 letter, Respondent denied that there had been a discharge of slurry on July 10, 2007.
25. Respondent has also had numerous unauthorized discharges from pond #10, which is not designed to discharge and had no permitted outfall in Respondent's NPDES permit. On at least June 5, 2010, February 11, 2009, March 5, 2008, August 8, 2007, January 6, 2005, June 17, 2000, April 22, 2000, March 30, 2000, December 14, 1999, and July 2, 1999, Respondent had unauthorized discharges from pond #10 to waters of the State.
26. Respondent reported the unauthorized discharges from pond #10 as follows: June 5, 2010 discharge by email dated June 5, 2010; February 11, 2009 discharge by letter dated April 6, 2009; August 8, 2007 discharge by submission of a sample analysis on September 11, 2007; January 6, 2005 discharge by telephone call on January 6, 2005; June 17, 2000 discharge by letter dated June 22, 2000; April 22, 2000 discharge by letter dated April 24, 2000; March 30, 2000 discharge by letter dated April 14, 2000; December 14, 1999 discharge by letter dated January 7, 2000; and July 2, 1999 discharge by letter dated July 13, 1999.
27. Ohio EPA sent Respondent NOV's regarding the unauthorized discharges on March 31, 2009 for the February 11, 2009 discharge, April 14, 2008 for the March 5, 2008 discharge, and May 9, 2000 for the April 22, 2000 discharge.
28. Respondent submitted a Permit to Install ("PTI") application to upgrade pond #10 to prevent future discharges. Ohio EPA issued this PTI on October 9, 2009.

29. Pursuant to ORC § 6111.04(A), no person shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes without a valid, unexpired permit.
30. In accordance with OAC 3745-33-02(A), no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant without applying for and obtaining an Ohio NPDES permit.
31. These Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Any such construction or modification is subject to the plan approval and PTI requirements of ORC §§ 6111.44 and 6111.45 and OAC Rule 3745-42.
32. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
33. The Director has given consideration to and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

V. ORDERS

1. Within ninety (90) days after the effective date of these Orders, Respondent shall submit to Ohio EPA, in accordance with Section X. of these Orders, for approval, a Slurry Release Prevention and Emergency Response Plan that identifies measures to protect public health and the environment. In this plan, Respondent shall, at a minimum:
 - a. Describe steps that will be taken to prevent slurry releases from occurring;
 - b. Describe devices and mechanisms that will be installed and operated to ensure that Respondent is made aware of all slurry releases;
 - c. Establish procedures to be followed in the event of a slurry release in order to ensure that such releases are appropriately and immediately responded to; these procedures shall include procedures to ensure immediate appropriate notification to the Ohio EPA, Ohio Department of Natural Resources Division of Mineral Resource Management and Division of Wildlife, and the public (if public safety is threatened).

These procedures should be developed in consultation with potentially affected entities; and

- d. Establish procedures to ensure that appropriate personnel are aware of and follow the Slurry Release Prevention and Emergency Response Plan and are appropriately trained.
2. If Ohio EPA requests that Respondent revise the Slurry Release Prevention and Emergency Response Plan as originally submitted, Respondent shall submit to Ohio EPA a revised plan or other written response to Ohio EPA's suggested revisions within thirty (30) days after receiving Ohio EPA's suggested revision.
 3. Within ninety (90) days after approval of the Slurry Release Prevention and Emergency Response Plan by the Ohio EPA, Respondent shall implement the Plan.
 4. Respondent shall annually review the Plan and update it as needed. Respondent shall submit a copy of any amendments or revisions of the Plan to Ohio EPA in accordance with Section X. of these Orders. Ohio EPA shall provide written notification to Respondent of acceptance or rejection of any amendments or revisions of the Plan. If an amendment or revision is rejected, Respondent shall submit to Ohio EPA, in accordance with Section X. of these Orders, a revised amendment or revision within thirty (30) days of receipt of written notification of the rejection.
 5. Respondent shall continue to implement the Slurry Release Prevention and Emergency Response Plan, as updated in accordance with Order No. 3, as long as Powhatan No. 6 Mine is being operated and/or the slurry impoundments remain in existence.
 6. Respondent shall operate and maintain a 24-hour composite sampler and recording flow meter at the #2 slurry impoundment outfall 001.
 7. Respondent shall operate and maintain a continuous turbidity meter at the #2 slurry impoundment outfall 001. Respondent shall submit a monthly report showing the daily maximum turbidity value to Ohio EPA in accordance with Section X. of these Orders. The report shall be submitted by the 15th of the following month.
 8. Respondent shall operate and maintain an alarm system at the #2 slurry impoundment outfall 001 to alert the person in responsible charge that there is a high turbidity reading.
 9. As soon as possible but not more than ninety (90) days after the effective date of these Orders, Respondent shall install, operate and maintain a 24-hour composite sampler and recording flow meter at outfall 013, the pond at the toe of the #2 dam.

Respondent shall maintain a log book with date, employee, and type and amount of chemical treatment for the pond. Respondent shall submit copies of the log book monthly to the Ohio EPA in accordance with Section X. of these Orders. The copies shall be submitted by the 15th of the following month.

10. Within ninety (90) days after the effective date of these Orders, Respondent shall commence a treatability study to determine whether pond #13 is adequate to treat the runoff and leachate that it receives to meet the current NPDES permit limits.
 - a. The study shall include ninety (90) consecutive days of grab sampling of the influent and 24-hour composite sampling of the discharge from pond #13.
 - b. The study shall be submitted to Ohio EPA, in accordance with Section X. of these Orders, within twelve (12) months after the effective date of these Orders for review and comment by Ohio EPA.
 - c. If the study shows that additional treatment is needed, Respondent shall submit a complete and approvable PTI application and detailed plans for the additional treatment, and a schedule for installation of the additional treatment.
 - d. Upon issuance of the PTI, Respondent shall install the additional treatment in accordance with the PTI and approved schedule.
11. Respondent shall immediately comply with the terms and conditions of NPDES permit No. 0IL00046*DD, and with the terms and conditions of any renewed or new NPDES permit.
12. Respondent shall pay the amount of ____ dollars (\$____) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for \$____. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to Ohio EPA's Southeast District Office in accordance with Section X of these Orders, and to Mark Mann, Enforcement

Manager, Storm Water and Enforcement Section, or his successor, at the following address:

Ohio Environmental Protection Agency
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

VI. TERMINATION

Except for requirements set forth in Orders Nos. 4-9 of these Orders which shall not terminate unless specifically agreed to in writing by the parties hereto, or unless the requirements are incorporated into the terms and conditions of Respondent's NPDES permit, Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03(E).

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to activities occurring on or at the Facility.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of

any other statutes or regulations applicable to Respondent or the Facility.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Surface Water
2195 Front Street
Logan, Ohio 43138
Attn: Enforcement Supervisor

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII. of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's civil liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an

event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative or a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski, Director

Date

IT IS SO AGREED:

The Ohio Valley Coal Company

Signature

Date

Printed or Typed Name

Title

ATTACHMENT I

OHIO VALLEY COAL COMPANY EFFLUENT VIOLATIONS 1/05 through 3/08

Outfall	Parameter	Violation Type*	Units	Permit Limit	Reported	Date
January 2005						
007	Total Suspended Solids	30D Conc	mg/L	35	155	1/1/2005
011	Total Suspended Solids	30D Conc	mg/L	35	68	1/1/2005
013	Total Suspended Solids	30D Conc	mg/L	35	145	1/1/2005
013	Iron, Total	30D Conc	ug/L	3000	3773	1/1/2005
007	Total Suspended Solids	1D Conc	mg/L	70	310	1/6/2005
013	Total Suspended Solids	1D Conc	mg/L	70	390	1/6/2005
013	pH	1D Conc	S.U.	6.5	6.0	1/6/2005
013	Iron, Total	1D Conc	ug/L	6000	14000	1/6/2005
013	Total Suspended Solids	1D Conc	mg/L	70	110	1/10/2005
January 2006						
007	Total Suspended Solids	30D Conc	mg/L	35	5005	1/1/2006
007	Iron, Total	30D Conc	ug/L	3500	60082	1/1/2006
007	Total Suspended Solids	1D Conc	mg/L	70	30000	1/3/2006
007	Iron, Total	1D Conc	ug/L	7000	360000	1/3/2006
007	Manganese, Total	1D Conc	ug/L	4000	9600	1/3/2006
September 2006						
002	CBOD 5 day	30D Conc	mg/L	10	28.3	9/1/2006
002	CBOD 5 day	30D Qty	Kg/day	0.9	1.7	9/1/2006
002	CBOD 5 day	1D Conc	mg/L	15	56	9/6/2006
002	CBOD 5 day	1D Qty	Kg/day	1.4	3.5	9/6/2006
October 2007						
002	CBOD 5 day	30D Conc	mg/L	10	43.9	10/1/2007
002	CBOD 5 day	30D Qty	Kg/day	0.9	2.5	10/1/2007
002	CBOD 5 day	1D Conc	mg/L	15	300	10/3/2007
002	CBOD 5 day	1D Qty	Kg/day	1.4	17.4	10/3/2007
September 2008						
002	CBOD 5 day	1D Conc	mg/L	15	33	9/3/2008
002	CBOD 5 day	1D Qty	Kg/day	1.4	2.24	9/3/2008
October 2008						
013	Manganese, Total	30D Conc	mg/L	2000	3307	10/1/2008
013	Manganese, Total	1D Conc	mg/L	4000	6900	10/22/2008
January 2009						
001	Total Suspended Solids	1D Conc	mg/l	70	85	1/28/2009
February 2009						
011	Manganese, Total	30D Conc	ug/l	2000	2800	2/1/2009
May 2009						
002	Nitrogen, Ammonia	30D Conc	mg/l	2	2.6	5/1/2009

002	CBOD 5 day	30D Qty	mg/l	0.9	0.92	5/1/2009
002	Nitrogen, Ammonia	1D Conc	mg/l	3	4.7	5/6/2009
002	CBOD 5 day	1D Conc	mg/l	15	29.8	5/20/2009
002	CBOD 5 day	1D Qty	mg/l	1.4	2.76	5/20/2009
September 2009						
013	Manganese, Total	30D Conc	mg/l	2000	2450	9/1/2009
February 2010						
013	Total Suspended Solids	30D Conc	mg/l	35	35.7	2/1/2010
013	Total Suspended Solids	1D Conc	mg/l	70	72	2/4/2010

Ohio EPA Sampling During a CSI on 3/5/08 Yielded the Following Effluent Violations:

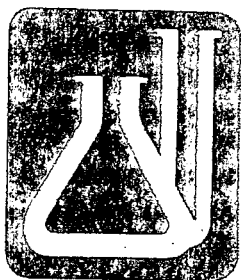
013	Iron, Total	1D Conc	ug/L	7000	17,700	3/5/08
013	Manganese, Total	1D Conc	ug/L	4000	4640	3/5/08
010	Iron, Total	1D Conc	ug/L	7000	19,700	3/5/08

Ohio EPA Sampling of Captina Creek Below the Discharge of Outfall 001 During the 2/28/08 Release:

001	Total Suspended Solids	1D Conc	mg/L	70	521	2/28/08
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ATTACHMENT II



2008 JUL -1 AM 11:25

TRA-DET INC.

P. O. BOX 2019
WHEELING, WV 26003-0219
(304) 547-9094
FAX: (304) 547-9097

LABORATORY ANALYSES

SHIPPING ADDRESS
RD #2, BOX 227A
BATTLE RUN ROAD
TRIADAPLHIA, WV 26059-9609

Ohio Valley Coal Company
56354 Pleasant Ridge Road
Aliedonia, OH 43902
Attn: Mr. David Bartsch

17-Mar-08

By: 
TraDet, Inc.

Company: Ohio Valley Coal Company
Source: Captina
Analysis Number: 0802367

Sample Type: Special Quarterly
Sampled By: QES (ZC)
Date & Time Sampled: 02-28-08 1038
Date & Time Received: 02-28-08 1530

Field pH, S.U. 7.9 S.U.

PARAMETER	CONCENTRATION		DATE & TIME ANALYZED	ANALYST	METHOD	MDL	
pH, Lab	7.82	S.U.	02-28-08 1720	WB	4500HB [2]		
Total Acidity (as CaCO ₃)	0.72	mg/L	03-03-08 1430	WB	2310B(4) [2]	0.16	mg/L
Total Alkalinity (as CaCO ₃)	98	mg/L	03-03-08 1100	WB	2320B [2]	0.13	mg/L
Total Iron	2.8	mg/L	03-05-08 1341	BS	3111B [1]	0.01	mg/L
Total Manganese	0.049	mg/L	03-05-08 1341	BS	3111B [1]	0.002	mg/L
Total Suspended Solids	160	mg/L	02-29-08 1600	WB	2540D [2]	0.87	mg/L
Hardness (as CaCO ₃)	140	mg/L	03-13-08 1230	MY	2340 C [1]	5.0	mg/L
Sulfate (as SO ₄)	66	mg/L	03-13-08 1220	LW	D516-02 [4]	0.65	mg/L
Specific Conductance	440	µmhos/cm	03-07-08 0830	LW	120.1 [3]	0.70	µmhos/cm
Nitrate	1.0	mg/L	02-28-08 1540	LW	352.1 [3]	0.03	mg/L

MDL: Method Detection Limit

[1] Standard Methods, 18th Edition [2] Standard Methods, 20th Edition [3] US EPA [4] ASTM [5] EPA SW846

AEC 12088

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

MAR 22 2007

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

American Energy Corporation
43521 Mayhugh Hill Road
Beallsville, Ohio 43716

Director's Final
Findings and Orders

Respondent

I certify this to be a true and accurate copy of the
official documents as filed in the records of the Ohio
Environmental Protection Agency.

PREAMBLE

It is agreed by the parties hereto as follows:

By: [Signature] Date: 3-22-07

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to American Energy Corporation (Respondent), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent, American Energy Corporation, is a corporation duly organized in the State of Ohio. Respondent is the owner and operator of the Century Mine, an underground coal mining facility located in Wayne Township, Belmont County, Ohio.
2. Between approximately June 2002 and August 2002, the Respondent installed and began operating a coal slurry pipeline. The pipeline runs from Respondent's coal preparation plant at the Century Mine approximately 15,000 feet to a coal slurry impoundment operated by the Ohio Valley Coal Company mine. The pipeline crosses Captina Creek.
3. The pipeline is a "disposal system" as that term is defined in ORC §6111.01(G).

4. Ohio Administrative Code (OAC) Rule 3745-42-02(A)(1) provides that no person shall cause, permit or allow the installation of a new disposal system without first obtaining a permit to install (PTI) or plan approval from the Director. ORC §6111.07(A) prohibits any person from violating, or failing to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violating any order, rule, or term or condition of a permit issued or adopted by the Director of Environmental Protection pursuant to those sections. Each day of violation is a separate offense.
5. By installing the pipeline on or around June 2002 prior to being issued a PTI by the Director, Respondent violated OAC Rule 3745-42-02(A)(1) and ORC §6111.07.
6. On or before August 23, 2005, a hole developed from internal erosion in a metal coupling at a bend in the pipeline near the point where the pipeline ran under the railroad and SR 148. Coal waste slurry flowed out of the hole, overflowing a maintenance pond and into Captina Creek, and affected approximately 2300 feet of Captina Creek, covering portions of the creek bottom.
7. The coal waste slurry flowing in, and spilling out of the pipeline is an "industrial waste" or "other waste" as those terms are defined in ORC §§6111.01(C) and (D), respectively.
8. The waters flowing in Captina Creek are "waters of the state" as that term is defined in ORC §6111.01. The Creek is classified as an exceptional warmwater habitat stream in OAC Rule 3745-1-13, Table 13-1, and is classified as an outstanding state water in OAC Rule 3745-1-05(A)(10)(c). The discharge was not authorized by the Director. The discharge from the pipeline was a point source discharge.
9. Pursuant to §ORC 6111.04(A), no person shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes without a valid, unexpired permit.
10. Ohio Adm. Code §3745-38-02(A) provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without either applying for and obtaining an Ohio NPDES permit in accordance with requirements of Chapter 3745-33 of the Administrative Code, complying with the indirect discharge permit program pursuant to Chapter 3745-36 of the Administrative Code or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of Chapter 3745-38 of the Administrative Code.
11. Respondent discharged coal waste slurry into Captina Creek on or around August 23, 2005, without obtaining an Ohio NPDES permit, complying with the indirect discharge permit program, or obtaining authorization to discharge under an Ohio NPDES general permit. In doing so, Respondent violated ORC §§6111.04 and 6111.07 and OAC Rule 3745-38-02(A).

American Energy Corporation
Director's Final Findings and Orders
Page 10 of 10

XIV. SIGNATORY AUTHORITY

Each undersigned representative or a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency




~~Laura Powell, Acting Director~~
Chris Korleski, Director

3/21/07
Date

IT IS SO AGREED:

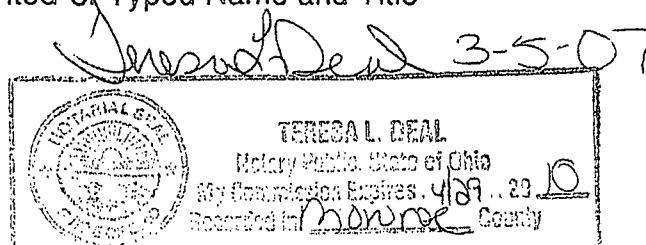
American Energy Corporation



Signature

03/05/07
Date

RYAN M. MURRAY, GENERAL MANAGER
Printed or Typed Name and Title



Attn: Enforcement Supervisor

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders; for any liability arising from, or related to the Site.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Surface Water
2195 Front Street
Logan, Ohio 43138

Installments, Respondent shall also submit three additional official checks to Ohio EPA, each in the amount of twelve thousand five hundred dollars (\$12,500.00), and each made payable to "Treasurer, State of Ohio." The first of these additional checks shall be submitted to Ohio EPA on or before the end of one hundred eighty (180) days after the effective date of these Orders, the second shall be submitted to Ohio EPA on or before two hundred seventy (270) days after the effective date of these Orders, and the third and last check shall be submitted to Ohio EPA on or before Three hundred sixty-five (365) days after the effective date of these Orders. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to Ohio EPA Southeast District Office in accordance with Section X of these Orders.

6. In lieu of paying the remaining ten thousand dollars (\$10,000.00) as part of the first installment of the civil penalty, Respondent shall within ninety (90) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of ten thousand dollars (\$10,000.00) to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for the SEP amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of each check shall be sent to Mark Mann, Manager, DSW, or his successor, at the following address:

Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216 -1049

7. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 5, Respondent shall immediately pay to Ohio EPA the remaining ten thousand dollars (\$10,000.00) of the first installment of the civil penalty in accordance with the procedures in Order No. 5.

individual is on duty and in a position to both hear the alarm and immediately cause the shutoff of the flow in the pipeline, at all times that the pipeline is in operation.

- iii. Establish procedures to be followed in the event of a spill in order to ensure that spills are appropriately and immediately responded to; these procedures shall include procedures to ensure immediate appropriate notification to the Ohio EPA, Ohio Department of Natural Resources Division of Mineral Resource Management, and Division of Wildlife, and the public (if public safety is threatened). These procedures should be developed in consultation with potentially affected entities; and
 - iv. Establish procedures to ensure that appropriate personnel are aware of and follow the Slurry Pipeline Spill Prevention and Emergency Response Plan and are appropriately trained.
- b. If Ohio EPA requests that Respondent revise the Slurry Pipeline Spill Prevention and Emergency Response Plan as originally submitted, Respondent shall submit to Ohio EPA a revised plan or other written response to Ohio's suggested revision within thirty (30) days after receiving Ohio EPA's suggested revision. Within ninety (90) days after acceptance of the Slurry Pipeline Spill Prevention and Emergency Response Plan by the Ohio EPA, Respondent shall implement the Slurry Pipeline Spill Prevention and Emergency Response Plan.
- 3. Respondent has forwarded to Ohio EPA information documenting that Respondent has contracted with a Class 4 Ohio Certified Wastewater Operator who is supervising the operation of the sewage treatment plant at outfall 017 and who is training an employee of Respondent to be a Class 1 Ohio Certified Wastewater Operator. Respondent shall maintain supervision of the sewage treatment plant at outfall 017 by the Class 4 operator under contract, or by a newly certified or other Class 1 Ohio Certified Wastewater Operator for three hundred sixty-five (365) days after the effective date of these Orders.
 - 4. Respondent shall not discharge effluent from outfall 017 in excess of effluent limitations contained in NPDES permit No. 01L00091*FD.
 - 5. Respondent shall pay the amount of fifty thousand dollars (\$50,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. The fifty thousand dollar civil penalty shall be paid, part as a cash payment, and part as a payment to the Clean Diesel School Bus Fund, as set forth in paragraphs 5, 6 and 7 of these Orders. Payment of the civil penalty shall be made in four equal installments over the period of one year as follows: Within ninety (90) days after the effective date of these Orders, as the first installment Respondent shall comply with Orders No. 6 and 7 and shall make a cash payment to Ohio EPA by an official check made payable to "Treasurer, State of Ohio" for two thousand five hundred dollars (\$2,500.00). As the remaining three

18. This document does not modify the NPDES permit or any successor permit. A purpose of this document is to correct Respondent's noncompliance with the NPDES permit.
19. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.
20. To resolve violations described in these Findings, the Director makes the following Orders.

V. ORDERS

1. Respondent shall not install or modify disposal systems at any location in Ohio without first receiving a PTI or plan approval from the Director as required by OAC Rule 3745-42-02 and ORC § 6111.07(A). Respondent may request termination of this Order upon a demonstration to the satisfaction of Ohio EPA that Respondent has maintained compliance with this Order for a period of three hundred sixty-five (365) days from the effective date of these Orders. Such a request for termination shall be submitted in accordance with Section X of these Orders. Termination of this Order does not relieve Respondent of its obligation to comply with all applicable laws and regulations, including but not limited to the requirement to obtain a PTI and/or plan approval prior to installation or modification of sewerage systems, treatment works, or disposal systems. Respondent does not need a permit to install from Ohio EPA for activities covered by the exemption in OAC 3745-42-02.
2. SLURRY PIPELINE - Spill Prevention and Emergency Response Plan
 - a. Within ninety (90) days after the effective date of these Orders, Respondent shall submit to Ohio EPA Southeast District Office, in accordance with Section X of these Orders, for approval, a Slurry Pipeline Spill Prevention and Emergency Response Plan that identifies measures to protect public health and the environment. In this plan, Respondent shall, at a minimum:
 - i. Describe steps that will be taken to prevent spills from occurring. This shall include, but is not limited to, routine inspection of the pipeline;
 - ii. Describe devices and mechanisms that will be installed and operated to ensure that Respondent is made aware of all spills from the pipeline (to the greatest extent possible). This shall include installation of a flow monitoring and control system capable of identifying leaks in the pipeline, shutting off the flow and notifying the Respondent's responsible operator; the shutoff requirement in the preceding sentence may be satisfied either by equipment that automatically shuts off the flow in the pipeline, or by an alarm system that automatically alerts an individual of a leak, which

American Energy Corporation
Director's Final Findings and Orders
Page 4 of 10

Any such construction or modification is subject to the PTI requirements of ORC §§6111.44 and 6111.45 and OAC Rule 3745-42.

12. OAC Rule 3745-1-04(A) provides that the following general water quality criteria shall apply to all surface waters of the state including mixing zones: To every extent practical and possible as determined by the director, these waters shall be: Free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life; and free from substances entering the waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life and/or are rapidly lethal in the mixing zone.
13. The slurry discharge by Respondent into Captina Creek on or around August 23, 2005 violated OAC Rule 3745-1-04(A) in that the slurry discharge resulted in suspended solids and other substances entering the waters that settled to form objectionable sludge deposits and that adversely affected aquatic life, and resulted in substances entering the waters in concentrations that were harmful to aquatic life.
14. On June 21, 2002, National Pollutant Discharge Elimination System (NPDES) permit No. 01L00091*FD, and subsequently modified on October 7, 2002, was issued to Respondent. The permit authorized, among other things, a discharge from Century Mine outfall number 601. This NPDES permit placed the following limitations on the following pollutants in the discharge from outfall number 601: total suspended solids – 18 mg/l maximum and 12 mg/l as a monthly average, 0.68 kg/day maximum and 0.45 kg/day as a monthly average; nitrogen in summer – 1.5 mg/l maximum and 1.0 mg/l as a monthly average, 0.06 kg/day maximum and 0.04 kg/day as a monthly average; nitrogen in winter – 4.0 mg/l maximum and 3.0 mg/l as a monthly average, 0.15 kg/day maximum and 0.11 kg/day as a monthly average; and cBOD₅ – 15 mg/l maximum and 10 mg/l as a monthly average, 0.56 kg/day maximum and 0.37 kg/day as a monthly average. (The discharge from outfall 601 previously entered pond 011. The 601 discharge has been rerouted to discharge directly to Piney Creek through outfall 017. Outfall 601 has been eliminated. Thus the Orders will address discharges from outfall 017.)
15. ORC §§6111.04(C) provides no person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit without first receiving a permit from the director to do so.
16. Respondent has, on at least the dates outlined in the chart attached hereto as Attachment I and incorporated by reference as if fully rewritten herein, exceeded the final effluent limitations in its NPDES permit from May 2004 through August 2005. Respondent's failure to comply with the final effluent limitations of its NPDES permit is a violation of the permit and ORC §§6111.04 and 6111.07.
17. These Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system.

OHIO ENVIRONMENTAL PROTECTION AGENCY
TELEPHONE MEMORANDUM

WITH Ryan Murray DATE August 24, 2005
REPRESENTING AEC TIME 3:45 p
PERMIT NO. PHONE
OEPA STAFF abbot Stevenson
SUBJECT Slurry Spill update

NOTES & SUMMARY

FOLLOW-UP DATE

350,000 gallons removed in last 24 hours (pumping around the clock)

Starting phase 2 - Have obtained access permission and have built a road to allow vac truck and men with sprayers into the creek to agitate slurry and suck it up.

4 vac trucks gallon capacity 400 ft apart continue

problem was a small hole size of a \$.50 piece) in a section of steel lateral pipe between the HDPE high density polyethylene pipe where the pipeline makes a 110deg turn. The steel pipe has thinner wall - turbulent flow wore out the line . Fixed now.

The pressure gages working fine - pressure head is so great didn't register a pressure drop. No Flow meters on system. They are looking into using inlet and outlet flow meters w/ alarms to the control room thru PLC.

They will be using 3 water trucks under pressure to hose off the rocks/creek water from slurry dam 10 days to fully clean the creek. Has action plan drafted and will be sending it soon to ODNR and OEPA.

Dennis Deavers was there today.

Once he turns in the plan he wants permission to use the pipe. I told him that they never got a PTI for installing the pipeline so I can't say that it's OK. He said Melanie and Dave Bartsch are looking for the permit now. I said there isn't one and I will fax the revision letter I sent to Melanie last fall. Fax # is 740/926-1381.

E-MAIL

To: Joe Koncelik, Director, OEPA
From: Steve Skinner, Chief-SEDO
Subject: Weekly Briefing for the Week of August 22, 2005
Date: August 25, 2005

**

PROJECTS

American Energy Corp Slurry Spill, Belmont County - At approximately 10 A.M. on 8/23/05, SEDO, DSW, received a call from American Energy Corp., Century Mine's (AEC) Ryan Murray notifying us that at 5 A.M. the company discovered a leak in their 12 inch coal slurry line, resulting in a spill of slurry into Captina Creek (EWH), affecting an estimated 1500 feet. SEDO, DSW staff arrived at the site at approximately 1:30 PM. Photos, water and sediment samples were taken. SEDO, ER arrived at approximately 3:30 PM to supervise cleanup. The company revised the estimated stream length affected to 3000 feet and discovered the problem was a hole in the valve flange at the emergency sump. ODNR Division of Mineral Resource Management and Division of Wildlife were also on the scene. The slurry line, installed without a Permit to Install, connects the AEC preparation plant waste to the Ohio Valley Coal Company slurry impoundment 15,651 feet away. AEC submitted an "as built" PTI application on 9/8/04, but has failed to submit requested revisions required for approval. Safety Klean was onsite and in early stages of clean up. The coal company proposed expanding clean up efforts by the time DSW staff left the scene. ER returned to the site on 8/24/05. All the fish that were trapped in the slurry for the upper 1880 feet are expected to die. On 8/3/05 SEDO performed a fish survey of this location on Captina Creek and found 33 different species, with Black Redhorse as the dominant species.

C & E Coal, Jefferson County - On August 19, 2005, representatives of C & E Coal met with Ken Dewey and staff of DSW (SEDO & CO), DAPC, DSIWM, and DDAGW to discuss the proposed beneficial use of coal combustion byproducts at the company's Wellsville site. They stated that they would like to use one million to 80 million tons of FGD to backfill highwalls on 50 to 500 acres under ODNR's beneficial use provisions. They would like to have their proposal approved by ODNR in the near future and then market use of the site to the nearby power plants. Beneficial use of FGD and other coal combustion byproducts at reclamation projects and abandon mine lands that are regulated and authorized by ODNR pursuant to ORC section 1513.02 are exempt from Ohio EPA's solid waste regulations. However, we are concerned with the scope of this proposal, which was presented as a first step to possible beneficial use of FGD on a larger scale. This proposal could be seen as an alternative means of disposal in lieu of use of residual waste landfills, given that it will be a commercial operation, taking materials that would otherwise be classified as waste. Given the anticipated very large increase in generation of FGD with many power plants moving to install scrubbers, we are concerned with the precedent that such a project would set, especially given the contrast between residual waste landfill requirements and beneficial use requirements imposed by ODNR. We will be discussing these issues and concerns further with DSIWM CO and ODNR.

cc: Unit Managers

Ohio Environmental Protection Agency Daily Media Log

TO: Mark Rickel / Kate Bartter, Governor's Office
 FROM: Heidi Griesmer, Ohio EPA—Media Relations Manager, 644-2160

Page(s) ____ of ____

SPOKESPERSON	DATE	REPORTER'S NAME/ NEWSPAPER/STATION	ISSUE	COMMENTS
Mike Settles	8-25-05	Roger McCoy WBNS, Ch. 10, Columbus	Captina Creek Slurry Spill	Tuesday morning, Ohio EPA was notified by American Energy Corp.'s Century Mine of a large slurry line break which discharged coal slurry into Captina Creek, Belmont County (an exceptional water water stream). About 3000' of stream are impacted. This section of stream was sampled just three weeks ago and our biologists found 33 species of fish. A large fish kill is expected. The impacted section of stream has been dammed and two companies are sucking up the slurry from the stream and discharging it to a slurry impoundment. The cleanup may take ten days. At the very least, the company is looking at an NOV for an unauthorized discharge. While the short term biological impacts are devastating, we would expect a recovery to begin once all the slurry has been flushed out and fish/critters are able to migrate from other areas of the stream.
Mike Settles and Kelly Capuzzi (DSW-SEDO)	8-25-05	Michael Schuler The Times Leader, Belmont County	Captina Creek Slurry Spill	See above.

AEC 12101



State of Ohio Environmental Protection Agency

Southeast District Office

2195 Front Street
Logan, OH 43138

TELE: (740) 385-8501 FAX: (740) 385-6490
www.epa.state.oh.us

Bob Taft, Governor
Bruce Johnson, Lieutenant Governor
Joseph P. Koncelik, Director

September 8, 2005

Re: Belmont County
American Energy Corp., Century Mine
OIL00091*GD
Notice of Violation
Correspondence (IWW)

Mr. Ryan Murray
American Energy Corp.
Century Mine
43521 Mayhugh Hill Road
Beallsville, Ohio 43716

Dear Mr. Murray:

On August 23, 2005, you notified me that American Energy Corporation's Century Mine discharged coal slurry from the slurry pipeline into Captina Creek. Ohio EPA personnel, Kelly Capuzzi, Nic Irwin, and I, of the Division of Surface Water (DSW), and Dennis Deavers, of the Division of Emergency and Remedial Response, inspected the site. We observed that Captina Creek was filled with black coal slurry for about 2300 feet. The slurry encased many fish and other aquatic life, causing a fish kill. Captina Creek remained affected from August 23rd to August 29th, when clean up efforts curtailed with the concurrence of Ohio EPA.

This unauthorized discharge was a violation of the Ohio Revised Code (ORC) Chapter 6111. The spill also caused violations of the Water Quality Standards contained in Ohio Administrative Code (OAC) Section 3745-1-04(A) and (C) by depositing putrescent or otherwise objectionable sludge deposits into waters of the state and discharging effluent containing substances that altered the natural color of the receiving streams. Finally, the slurry pipeline was installed in 2002 without Ohio EPA's approval and in violation of ORC 6111.45. Due to the seriousness of these violations, DSW SE District Office is recommending enforcement action be taken.

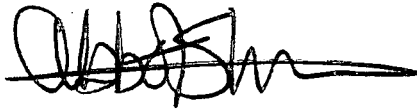
We received your report required by the NPDES permit for reporting unauthorized discharges. However, we have not received the follow-up plan to prevent future spills, which should include steps to be taken and deadlines for those actions. In addition, a final report must be submitted, detailing the events of the spill including what time it was discovered, when it was inspected last before discovery, volume estimates of spilled and disposed slurry, the destination of the material removed from the creek, the results

American Energy Corp., Century Mine
Page 2

of the samples taken, the cause, the reason why the warning system did not alert the facility, how long the slurry pipeline was not in use due to the pipeline repair and clean up, and a description of the clean-up project, including costs.

If there are any questions, please contact me at (740) 380-5284.

Sincerely,

A handwritten signature in black ink, appearing to read 'Abbot Stevenson', with a long horizontal flourish extending to the right.

Ms. Abbot Stevenson
Environmental Engineer
Permits and Enforcement Section
Division of Surface Water

AS/dh

c: Dave Clark, ODNR DMRM
c: Randy Smith, ODNR, Div. of Wildlife
c: AS file

OhioEPA
State of Ohio Environmental Protection Agency
S.E.D.O.

STREET ADDRESS:

Lazarus Government Center
122 S. Front Street
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

2006 MAY -1 PM 12:19

Certified Mail

MAY 3, 2006

Robert Murray, President
American Energy Corporation
43521 Mayhugh Hill Road
Beallsville, Ohio 43716

Re: Proposed Findings and Orders - American Energy Corporation (AEC)

Dear Mr. Murray:

The staff of the Ohio Environmental Protection Agency's Division of Surface Water has informed me that American Energy Corporation has committed several violations of Ohio Revised Code Chapter 6111 and rules adopted thereunder. The violations include a coal waste slurry spill into Captina Creek in Belmont County. The spill originated from a leak that developed in a coal slurry pipeline near the point it crossed the creek. AEC also constructed the coal waste slurry pipeline without first obtaining a permit to install from the Ohio EPA. Finally, the American Energy Corporation has repeatedly exceeded effluent limitations set forth in its NPDES permit at Century Mine's number 601 outfall.

As a result of these violations, I have decided that enforcement action is necessary to both address the violations and deter future violations. I have enclosed proposed Findings and Orders. I encourage you to review the proposed Findings and Orders carefully. The Orders describe the alleged violations in greater detail, establish a schedule of compliance for their resolution. The Findings and Orders will be an accord and satisfaction of your liability for these violations and also contains a waiver of your rights to seek administrative and judicial review of the orders. The Orders also require payment of a civil penalty of seventy-nine thousand two hundred dollars (\$79,200). Of this proposed amount, \$50,400 is attributable to the slurry spill and the remaining \$28,800 is attributable to the NPDES permit violations. The policy by which this penalty violation is computed typically adds another ten to seventy percent to the penalty based on the level of corrective actions initiated. In this case, however, no increase was computed because your company took prompt action to contain and clean up the spill.

I request that you sign the Findings and Orders and return them to Bryan Zima of the Ohio EPA Legal staff within fourteen (14) days. However, if you wish to propose specific changes to the document, or wish to meet to discuss the matter in greater detail, please contact Mr. Zima at (614) 644-2853 within the fourteen days.

Bob Taft, Governor
Bruce Johnson, Lieutenant Governor
Joseph P. Koncelik, Director

Robert Murray, President

Re: Proposed Findings and Orders - American Energy Corporation (AEC)

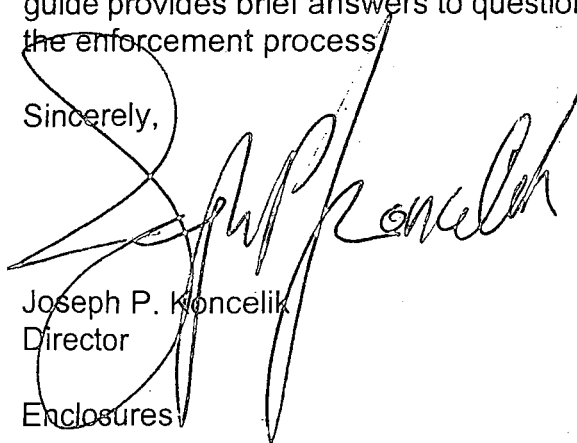
Page Two

I am optimistic that we can resolve this matter amicably and expeditiously through these administrative Findings and Orders. Such a resolution would avoid the expense and time associated with litigation upon referral to the Ohio Attorney General.

If you decide not to enter into the Findings and Orders with Ohio EPA, this settlement offer will be deemed withdrawn, and I will consider other enforcement options to address the violations. Because this correspondence and enclosure summarize a proposal for settlement, I consider the documents to be inadmissible by you for any purpose in any action which may be taken by the State of Ohio.

A guide to the DSW administrative enforcement process has also been enclosed. The guide provides brief answers to questions that are frequently asked by parties involved in the enforcement process.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'J. P. Koncelik', is written over the typed name and title.

Joseph P. Koncelik
Director

Enclosures

cc: Bryan Zima, Ohio EPA Legal Office
Andrew Conway, Division of Surface Water

A guide to the . . .
Administrative Enforcement Process
within the Division of Surface Water

Introduction

This information sheet has been prepared to help you understand the administrative enforcement process within the division. With an understanding of the process and adequate preparation, prompt resolution of this enforcement action can be facilitated. Included are answers to the questions most frequently asked by parties involved in the surface water enforcement process.

I have been working with the district inspector to fix the violations. Why is an enforcement action necessary?

The division considers the following factors in deciding that an enforcement action is necessary: (1) Ohio EPA needs to obtain reparation for your violations; (2) your violations are serious; (3) you have taken too long to address the violations; (4) you need to be on a formal schedule to address the violations; (5) you have been recalcitrant in addressing the violations; and/or (6) your facility is a chronic violator.

Why should I try to negotiate an administrative consent order with Ohio EPA?

- Negotiating an administrative consent order ("Order" or Director's Final Findings and Order) with Ohio EPA avoids expensive and time-consuming litigation.
- It can be a swifter resolution of the State's claims against your facility for its non compliance.
- We can quickly identify any obstacles to agreement.

Should I continue working with the district inspector?

Yes, the district inspector is the best person to work with you to resolve the technical aspects of the violations.

What should I do now that I received the proposed administrative consent order?

You should review the enclosed Order and the summary of the penalty calculation (if applicable). If you accept the enclosed Order as written, sign the waiver and send it to the staff attorney referenced in the Director's cover letter within two weeks. If you cannot accept the Order as written, the Agency would like to meet with you to discuss your concerns. Please contact the staff attorney at (614)644-3037 within two weeks to arrange a meeting.

If I want to have a meeting, what should I do to prepare for it?

Generally, the most productive meetings occur when both parties come prepared to discuss all issues. The proposed administrative consent order contains the Agency's position. Since you were not willing to agree to the Order as written, Ohio EPA needs to know whether you: (1) disagree with the facts outlined in the Order; (2) are not able or willing to comply with the Order; or (3) have information you feel may mitigate the civil penalty settlement amount. Send the staff attorney a written summary of your company's issues within two weeks from the date of the Director's cover letter. Additionally, if you believe you are financially unable to pay the penalty, contact the staff attorney for a list of information we need to evaluate your ability to pay.

What will happen at the meeting?

During the meeting, Ohio EPA will respond to any information you have previously provided. We are willing to work with you to arrive at mutually agreed upon modifications to the Order. Ohio EPA expects to make significant progress on the negotiations at the meeting. If we reach an agreement at the meeting, the division will finalize the Order for your signature within two weeks. If we cannot agree at the meeting and we feel adequate progress is being made, the Agency will hold its offer of settlement open and a follow up

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

American Energy Corporation	:	Director's Final
43521 Mayhugh Hill Road	:	Findings and Orders
Beallsville, Ohio 43716	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to American Energy Corporation (Respondent), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent, American Energy Corporation, is a corporation duly organized in the State of Ohio. Respondent is the owner and operator of the Century Mine, an underground coal mining facility located in Wayne Township, Belmont County, Ohio.
2. Between approximately June 2002 and August 2002, the Respondent installed and began operating a coal slurry pipeline. The pipeline runs from Respondent's coal preparation plant at the Century Mine approximately 15,000 feet to a coal slurry impoundment operated by the Ohio Valley Coal Company mine. The pipeline crosses Captina Creek.
3. The pipeline is a "disposal system" as that term is defined in ORC §6111.01(G).

4. Ohio Administrative Code (OAC) Rule 3745-42-02(A)(1) provides that no person shall cause, permit or allow the installation of a new disposal system without first obtaining a permit to install (PTI) or plan approval from the Director. ORC §6111.07(A) prohibits any person from violating, or failing to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violating any order, rule, or term or condition of a permit issued or adopted by the Director of Environmental Protection pursuant to those sections. Each day of violation is a separate offense.
5. By installing the pipeline on or around June 2002 prior to being issued a PTI by the Director, Respondent violated OAC Rule 3745-42-02(A)(1) and ORC §6111.07.
6. On or before August 23, 2005, a hole opened in a metal coupling at a bend in the pipeline near the point where the pipeline crossed Captina Creek. Coal waste slurry flowed out of the ruptured pipeline, down an embankment and filled approximately 2300 feet of Captina Creek, covering the creek bottom and encasing fish and other aquatic wildlife and vegetation.
7. The coal waste slurry flowing in, and spilling out of the pipeline is an "industrial waste" or "other waste" as those terms are defined in ORC §§6111.01(C) and (D), respectively.
8. The waters flowing in Captina Creek are "waters of the state" as that term is defined in ORC §6111.01. The Creek is classified as an exceptional warmwater habitat stream in OAC Rule 3745-1-13, Table 13-1, and is classified as an outstanding state water in OAC Rule 3745-1-05(A)(10)(c). The discharge was not authorized by the Director. The discharge from the pipeline was a point source discharge.
9. Pursuant to §ORC 6111.04(A), no person shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes without a valid, unexpired permit.
10. Ohio Adm. Code §3745-38-02(A) provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without either applying for and obtaining an Ohio NPDES permit in accordance with requirements of Chapter 3745-33 of the Administrative Code, complying with the indirect discharge permit program pursuant to Chapter 3745-36 of the Administrative Code or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of Chapter 3745-38 of the Administrative Code.
11. Respondent discharged coal waste slurry into Captina Creek on or around August 23, 2005, without obtaining an Ohio NPDES permit, complying with the indirect discharge permit program, or obtaining authorization to discharge under an Ohio NPDES general permit. In doing so, Respondent violated ORC §§6111.04 and 6111.07 and OAC Rule 3745-38-02(A).

12. OAC Rule 3745-1-04(A) provides that the following general water quality criteria shall apply to all surface waters of the state including mixing zones: To every extent practical and possible as determined by the director, these waters shall be: Free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life; and free from substances entering the waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life and/or are rapidly lethal in the mixing zone.
13. The slurry discharged by Respondent into Captina Creek on or around August 23, 2005 violated OAC Rule 3745-1-04(A) in that the slurry discharge resulted in suspended solids and other substances entering the waters that settled to form objectionable sludge deposits and that adversely affected aquatic life, and resulted in substances entering the waters in concentrations that were harmful to aquatic life.
14. On June 21, 2002, National Pollutant Discharge Elimination System (NPDES) permit No. 01L00091*FD, and subsequently modified on October 7, 2002, was issued to Respondent. The permit authorized, among other things, a discharge from Century Mine outfall number 601. This NPDES permit placed the following limitations on the following pollutants in the discharge from outfall number 601: total suspended solids – 18 mg/l maximum and 12 mg/l as a monthly average, 0.68 kg/day maximum and 0.45 kg/day as a monthly average; nitrogen in summer – 1.5 mg/l maximum and 1.0 mg/l as a monthly average, 0.06 kg/day maximum and 0.04 kg/day as a monthly average; nitrogen in winter – 4.0 mg/l maximum and 3.0 mg/l as a monthly average, 0.15 kg/day maximum and 0.11 kg/day as a monthly average; and CBOD – 15 mg/l maximum and 10 mg/l as a monthly average, 0.56 kg/day maximum and 0.37 kg/day as a monthly average.
15. ORC §§6111.04(C) provides no person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit without first receiving a permit from the director to do so.
16. Respondent has, on at least the dates outlined in the chart attached hereto as Attachment I and incorporated by reference as if fully rewritten herein, exceeded the final effluent limitations in its NPDES permit from May 2004 through August 2005. Respondent's failure to comply with the final effluent limitations of its NPDES permit is a violation of the permit and ORC §§6111.04 and 6111.07.
17. These Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Any such construction or modification is subject to the PTI requirements of ORC §§6111.44 and 6111.45 and OAC Rule 3745-42.

18. This document does not modify the NPDES permit or any successor permit. A purpose of this document is to correct Respondent's noncompliance with the NPDES permit.
19. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

V. ORDERS

1. Respondent shall not install or modify disposal systems at any location in Ohio without first receiving a PTI or plan approval from the Director as required by OAC Rule 3745-42-02 and ORC § 6111.07(A). Respondent may request termination of this Order upon a demonstration to the satisfaction of Ohio EPA that Respondent has maintained compliance with this Order for a period of three hundred sixty-five (365) days from the effective date of these Orders. Such a request for termination shall be submitted in accordance with Section X of these Orders. Termination of this Order does not relieve Respondent of its obligation to comply with all applicable laws and regulations, including but not limited to the requirement to obtain a PTI and/or plan approval prior to installation or modification of sewerage systems, treatment works, or disposal systems.
2. SLURRY PIPELINE - Spill Prevention and Emergency Response Plan
 - a. Within ninety (90) days after the effective date of these Orders, Respondent shall submit to Ohio EPA Southeast District Office, in accordance with Section X of these Orders, for approval, a Slurry Pipeline Spill Prevention and Emergency Response Plan that identifies measures to protect public health and the environment. This plan shall include but not be limited to:
 - i. Steps that will be taken to prevent spills from occurring. This shall include, but is not limited to, routine inspection of the pipeline;
 - ii. a mechanism to ensure that Respondent is made aware of all spills from the pipeline (to the greatest extent possible). This shall include installation of a flow monitoring and control system capable of identifying leaks in the pipeline, shutting off the flow and notifying the Respondent's responsible operator;
 - iii. establishing and implementing procedures to ensure that spills are appropriately responded to, including ensuring that reports of spills are immediately dispatched to appropriate personnel for investigation and appropriate response;

- iv. establishing and implementing procedures to ensure that appropriate personnel are aware of and follow the Slurry Pipeline Spill Prevention and Emergency Response Plan and are appropriately trained;
 - v. establishing and implementing emergency operations; and
 - vi. establishing and implementing procedures to ensure immediate appropriate notification to the Ohio EPA, Ohio Department of Natural Resources Division of Mineral Resource Management, and Division of Wildlife, and the public (if public safety is threatened). These procedures should be developed in consultation with potentially affected entities.
 - b. Within one hundred eighty (180) days after the effective date of these Orders, Respondent shall implement the Slurry Pipeline Spill Prevention and Emergency Response Plan.
 - c. Within one hundred eighty (180) days after the effective date of these Orders, Respondent shall install the flow monitoring and control system identified in paragraph (ii) above.
 - d. Respondent shall fully respond to any comments received from Ohio EPA on the documents submitted pursuant to this section within sixty (60) days of receiving the comments (or such longer period as agreed upon by the parties), including modification of the plans as necessary.
3. Within thirty (30) days after the effective date of these Orders, Respondent shall hire a Class 1 Ohio Certified Wastewater Operator to operate the sewage treatment plant at outfall 601/017. This requirement will be discontinued after three hundred sixty-five (365) days after the effective date of these Orders.
4. Within sixty (60) days after the effective date of these Orders, Respondent shall redirect the discharge line of the sewage treatment plant at outfall 601 to Piney Creek as authorized in the modification to the NPDES permit approved on October 7, 2002, as outfall 017.
5. Respondent shall pay the amount of seventy-nine thousand two hundred dollars (\$79,200.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for sixty-three thousand three hundred sixty dollars (\$63,360.00) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration

P.O. Box 1049
Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to Ohio EPA Southeast District Office in accordance with Section X of these Orders.

6. In lieu of paying the remaining fifteen thousand eight hundred forty dollars (\$15,840.00) of the civil penalty, Respondent shall within fourteen (14) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of fifteen thousand eight hundred forty dollars (\$15,840.00) to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for said amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of each check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216 -1049

7. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 5, Respondent shall immediately pay to Ohio EPA the remaining fifteen thousand eight hundred forty dollars (\$15,840.00) of the civil penalty in accordance with the procedures in Order No. 5.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to the Site.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Surface Water
2195 Front Street
Logan, Ohio 43138
Attn: Enforcement Supervisor

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative or a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Joseph P. Koncelik, Director

Date

IT IS SO AGREED:

American Energy Corporation

Signature

Date

Printed or Typed Name and Title

DRAFT

Cell Class. 07 Nov
07/13/06

Addendum to Part 3, Page 23, Item A(12)(d)

1.

The slurry pipeline is constructed of High Density Polyethylene with the following physical characteristics:

Cell Classification	D3350 345464C
Density	D1505 0.955 gm/cc
Melt Index (190°C/2.16 kg)	D1238 0.07 gm/10 min
Flow Rate (190°C/21.6 kg)	D1238 8.5 gm/10 min
Flexural Modulus	D790 136,000 psi
Elastic Modulus: short-term	D638 125,000 psi
Elastic Modulus: long-term	D638 30,000 psi
Tensile Strength @ Yield	D638 3,500 psi
ESCR	D1693 >10,000 hrs. failure
Slow Crack Growth, PENT	F1473 >100 hrs.
HDB @ 73.4°F	D2837 1,600 psi
HDB @ 140°F	D2837 800 psi
UV Stabilizer (Carbon)	D1603 2.5%
Brittleness Temperature	D746 <-180°F
Melting Point	D789 261°F
Vicat Softening Temperature	D1525 255°F
Hardness	D2240 64 Shore D
Izod Impact Strength (Notched)	D256 7 ft-lbf/in
Thermal Expansion Coefficient	D696 1.0×10^{-4} in/in/°F
Poisson's Ratio --	0.42
Manning Roughness --	0.01
Volume Resistivity	D991 2.6×10^{16} Ω-cm
Average Molecular Weight	GPC 330,000

The configuration is trade size 12" SDR 7 having dimensional parameters of
OD = 12.75 inches, ID = 8.96 inches (nominal),
As manufactured minimum wall thickness = 1.821 inches.

Polyethylene piping systems perform as well as or better than alternate materials due to the inherent characteristics of polyethylene. These are as follows:

- Long-Term Strength
- Flexibility
- Corrosion Resistance
- Chemical Resistance
- Toughness
- Weatherability
- Low Friction Loss
- Non-toxic
- Low Thermal Conductivity
- No Galvanic Action
- Abrasion Resistance

Caliper measurements of wall thickness were made on two sections of pipe which had been in service for approximately three years. The first was at a point approximately 4400 ft from the charging end (May 05) and the second at 8800 ft in August 05.

The observed wear was negligible. Readings ranged from 1.820 to 1.921 inches. The measurements were equal to, or greater than, new pipe wall thickness.

The slurry pipeline operates under the following service:

Charging end pump pressure = 240 psi

Charging end elevation = 1145 MSL

Nominal flowrate = 1400 USG/min

Nominal velocity = 7.12 ft/sec

Discharge end elevation = 1130 MSL

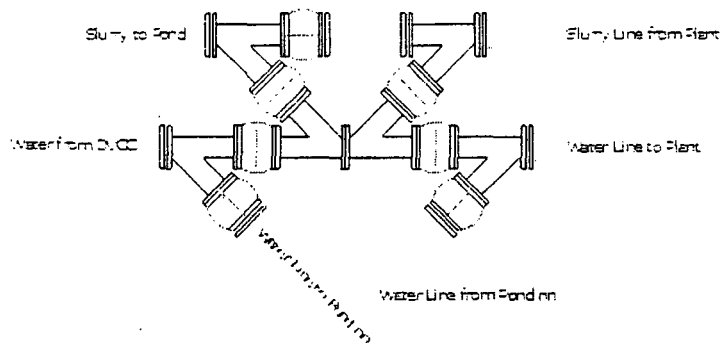


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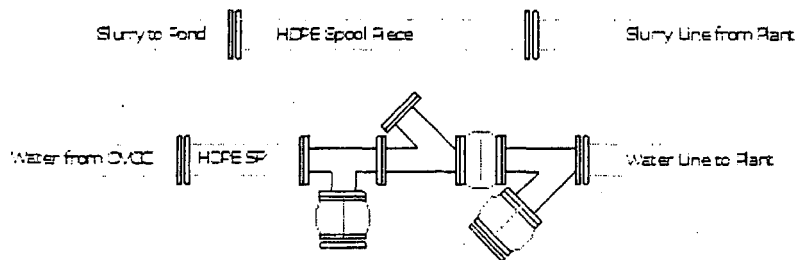
The following measures will be taken to reduce the likelihood of pipeline failure.

All steel sections will be removed from the slurry pipeline. For the Main Inspection Pit South of the Captina crossing, this will be accomplished as follows:

Current Configuration

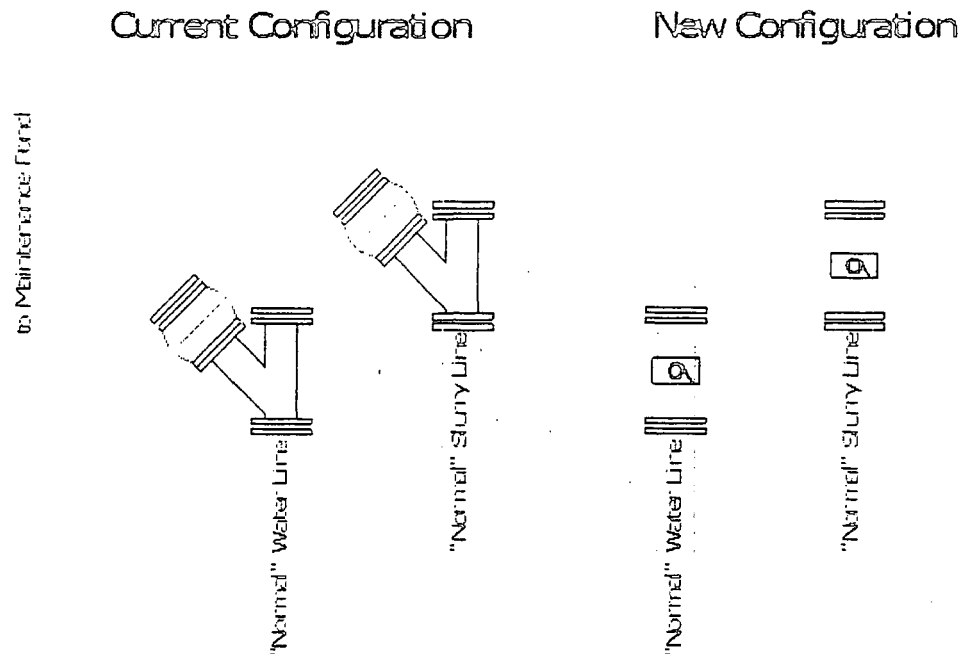


New Configuration



The steel Valves and Laterals in the Slurry circuit will be removed and replaced with a flanged HDPE "spool piece".

The steel Laterals and Drain Valves at the first maintenance pond (just North of the Captina crossing) will be replaced with flanged HDPE spool pieces. These spool pieces will be fitted with stop saddles for a hot tap tool. The tool will be stored in reserve and the hot tap will not be initiated until, and if, line draining is necessary. Thus, there is no hydraulic consequence of the drain arrangement.



The steel Laterals and Drain Valves at the second maintenance pit will be eliminated and the HDPE pipes will be joined. This has already been accomplished for one of the lines.

Slurry will not be pumped through the freshwater pipeline without first notifying DMRM.

3.

The proposed changes to the pipeline, including removing all steel sections, increasing sweep radius of bends, eliminating tappings, and eliminating intermediate stop valves will serve to substantially increase the integrity of the system. The integrity of the HDPE pipe has been demonstrated as excellent. It has shown undetectable wear after nearly 3 years of service. Following the aforementioned changes, the pipeline will be 100% HDPE end-to-end. In order to detect leakage, non-contact flow meters will be installed at the inlet and near the discharge of the slurry line. If a difference in the two reading is detected, the plant operator will receive an alarm. The manufacturer states that each meter is accurate to within +/- 0.5%. This means that, in theory, leakage in the amount of 1% of total flow should

be detectable. In practice, these meters have not been used in this application so system accuracy is unknown.

The pipeline operational flow rate and slurry density vary considerably. The pipeline has up-hill and down-hill segments with the discharge end lower than the charging end. There is considerable elasticity in the pipeline volume. The pipeline rarely, if ever, operates at steady-state condition. The magnitude of changes in flow parameters owing to a leak condition is masked by the inherent variance (noise) present in normal operation. Consequently, automatic monitoring of flow parameters to determine leakage is not practical.

Since the pipeline is the same strength in its entirety, no failure location can be pre-determined. This makes spill switches/alarms impractical

4.

In the event of an unplanned discharge, the pump will immediately be stopped and the shut-off valve closed.

5.

Inspection and Maintenance Schedule

- a. Inspect the entire length of the line on a monthly basis
- b. Perform maintenance on an as-needed basis.

Results of the pipeline inspection will be maintained at AEC's office and will be available for review by the Division at any time. Any problems noted during the inspection will be brought to the Division's attention immediately. The maintenance sump designs are included in IBR-0425-8.

6.

The staff will be trained in the following aspects of pipeline operation:

- a. Discharge prevention procedures
- b. Proper operation and maintenance procedures
- c. Procedures to report discharges

Inspector, John Puterbaugh mobile-614-264-3855

Cambridge Regional Office 740-439-9079

OEPA spill hotline- 1-800-282-9378

- d. Contact names and phone numbers for contractors to respond


C & K Industries 724-947-9401

Envirosource 330-388-5191 or 330-825-8266

Safety Kleen 304-233-6567

7.

No additional containment structures are proposed. Existing containment sumps will be used for any maintenance-draining of the pipeline. Secondary containment for a pipeline is not feasible. No containment can be designed for which a flowing pipeline's spilled contents can be held. It is not common practice to develop secondary containment structures along a pipeline. AEC will provide daily



inspections of the pipeline on the AEC property just prior to the pipe crossing the stream, and on the north side of SR 148 (where SR 148 and the slurry line intersect).

8.

In the event of a spill, Mine Control will immediately call the mine superintendent. The mine superintendent will visit the site, and contact the ODNR inspector and OEPA spill hotline. The area will be isolated, if appropriate, with the use of excavating equipment. Local contractors may be contacted depending on the severity of the spill.

INTER-OFFICE COMMUNICATION

TO: Dave Clark, ODNR - Division of Mineral Resource Management

FROM: Abbot Stevenson, Ohio EPA - Division of Surface Water, SE District Office

RE: American Energy Corp. - Spill Prevention and Emergency Response Plan

DATE: July 14, 2006

I have reviewed the draft Spill Prevention and Emergency Response Plan for American Energy Corp. and recommend the following revisions:

1. This document is not written in the format of a Spill Prevention and Emergency Response Plan. I have attached a plan for a SPCC plan for guidance. A final official copy of the plan must be submitted to Ohio EPA for approval/authorization.
2. Provide a map of the pipeline with details about the plan. Show location of hot tap spools.
3. More information is needed on the flow monitoring system that will notify the company of a leak. Provide system specifications and procedure for use. How will it alarm?
4. How will the leak detection system be tested?
5. Oil pipelines are pressure tested as a matter of routine maintenance. Can this be done to this pipeline?
6. The accessible sections of the pipeline, along Twp. Rd. 74, the access road between Twp. Rd. 74 and S.R. 148, S. R. 148, and the Casey Run stream crossing must be inspected daily and the rest must be inspected weekly. A log book shall be kept with daily inspection records. Records shall be kept for 3 years. An example inspection form should be included in the plan.
7. In the notification procedure, add notification of Division of Wildlife (if streams are endangered) and the State Highway Patrol (if public safety is threatened). Ohio EPA notification requirements from the NPDES permit part III, item 12 should be repeated in this section of the plan, including the requirement to sample the spill material.
8. Once a leak is detected, what will be the procedure to stop the leak?



Ohio Department of Natural Resources

BOB TAFT, GOVERNOR

DEPA
S.E.O.

SAMUEL W. SPECK, DIRECTOR

2006 AUG 29 AM 10:26

Division of Mineral Resources Management
South Region

2050 East Wheeling Avenue
Cambridge OH 43725-2159

Phone (740) 439-9079 Fax (740) 432-7711

August 28, 2006

Melanie Murray
American Energy Corporation
43521 Mayhugh Hill Road
Beallsville, Ohio 43716

RE: Slurry Containment/Spill Prevention, ARP #R-425-16

Dear Ms. Murray:

Please allow this letter to serve as an outline of the items that need to be added, and/or modified in the spill prevention plan for the slurry system at D-425. We received input from Chief Sponsler and from Abbot Stevenson at OEPA, relative to the plan you originally submitted to the Division via ARP #R-425-16. It seems prudent now to consider preparing one submittal that will satisfy both agencies requirements, and to that end we would like for you to consider the following items:

1. OEPA has a specific format for Spill Prevention and Emergency Response Plans. I have attached a copy of that format to this letter for your reference. The Division will accept this format as part of the ARP process, if it can include the items that are already part of the agreed upon ARP package.
2. The revised submittal should describe the volume of the pipeline when it is full, and should describe the volume of the containment pond(s)/basins, and provide a commitment to maintain adequate storage capacity for the content of the pipeline.
3. Provide a physical description of the layout, including a map, describing the operation of the plant, slurry line, freshwater line, and the refuse impoundment at D-360. The map should include the locations of all valves, fittings, and hot-tap spools.
4. More information is needed on the flow monitoring system that will notify the company of a leak. Provide system specifications and procedure for use. How will it alarm? Provide an alarm system for the concrete block structure that houses the valve set(s) on the south side of Captina Creek. A functional alarm and shut-off system must be developed to prevent unknown leaks from causing large spills.
5. How will the leak detection system be tested?
6. Oil pipelines are pressure tested as a matter of routine maintenance. Can this pipeline be pressure tested? If so, provide a plan for pressure testing on an annual basis.

7. The accessible sections of the pipeline, along Twp. Rd. 74, the access road between Twp. Rd. 74 and S.R. 148, S.R. 148, and the Casey Run stream crossing must be inspected daily and the rest must be inspected weekly. A logbook shall be kept with daily inspection records. Records shall be kept for 3 years. An example inspection form should be included in the plan.
8. In the notification procedure, add notification of Division of Wildlife (if streams are endangered) and the State Highway Patrol (if public safety is threatened). Ohio EPA notification requirements from the NPDES permit part III, item 12, should be repeated in this section of the plan, including the requirement to sample the spill material.
9. Once a leak is detected, describe the procedure to stop the leak?
10. Provide details on how hot tapping works. Will the required equipment be available on site? How long will it take the crew to install a hot tap? Can any section of pipe be hot tapped, or only where there are spooled sections?
11. Provide a detailed plan for clean up. The company has performed a low flow clean up. Details for that should be provided. How will a high flow clean up proceed?

Please give consideration to these items and contact us so that we can arrange a convenient date to come to your office and discuss your concerns, and answer any questions that you may have. Ms. Stevenson has committed to this on-site meeting, and I believe that the discussions would be beneficial.

We will await your reply as to a potential meeting date.

Sincerely,



Dave Clark
Regional Manager, DMRM

DC/dc

PC: Abbot Stevenson – OEPA
John Puterbaugh

INTER-OFFICE COMMUNICATION

TO: Dave Clark, ODNR - Division of Mineral Resource Management

FROM: Abbot Stevenson, Ohio EPA - Division of Surface Water, SE District Office

RE: American Energy Corp. - Spill Prevention and Emergency Response Plan

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4. How will the leak detection system be tested?
5. Oil pipelines are pressure tested as a matter of routine maintenance. Can this be done to this pipeline?
6. The accessible sections of the pipeline, along Twp. Rd. 74, the access road between Twp. Rd. 74 and S.R. 148, S. R. 148, and the Casey Run stream crossing must be inspected daily and the rest must be inspected weekly. A log book shall be kept with daily inspection records. Records shall be kept for 3 years. An example inspection form should be included in the plan.
7. In the notification procedure, add notification of Division of Wildlife (if streams are endangered) and the State Highway Patrol (if public safety is threatened). Ohio EPA notification requirements from the NPDES permit part III, item 12 should be repeated in this section of the plan, including the requirement to sample the spill material.
8. Once a leak is detected, what will be the procedure to stop the leak?

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9. Provide details on how hot tapping works. Will the required equipment be available on site? How long will it take the crew to install a hot tap? Can any section of pipe be hot tapped or only where there are spooled sections?
 10. Demonstrate that the ponds are designed to hold the contents of the pipeline in the event they drain or have to be drained.
 11. Provide a detailed plan for clean up. The company has performed a low flow clean up. Details for that should be provided. How will a high flow clean up proceed?

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43521 Mayhugh Hill Road • Twp. Hwy. 88 • Beallsville, OH 43716

PHONE: (740) 926-9152
FAX: (740) 926-9138

August 26, 2005

RE: Unauthorized Discharge August 23, 2005

Ms. Abbot Stevenson
Ohio EPA
Southeast District Office
2195 Front Street
Logan, Ohio 43138

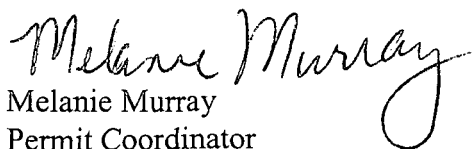
Dear Abbot,

I am writing to inform you of the termination of discharge to Captina Creek. Currently, we are working with the Ohio EPA, and Ohio Department of Natural Resources to determine a safe and effective way to clean the creek. Clean up work is currently in progress.

1. Slurry has been discharged to Captina Creek from a failure in the pipeline that transports the coal slurry. Attached is a copy of an analytical summary of the chemical constituents of the coal slurry.
2. This discharge took place in approximately 2,300 feet of Captina Creek. Pumping of slurry ceased immediately upon detection of the leak.
3. The cause of the exceedance was a pipeline failure. The portion of the pipeline that failed was a steel fitting.
4. The unauthorized discharge began early morning August 23, 2005, and was terminated upon detection.
5. This discharge was terminated upon detection.
6. steps being taken to eliminate these discharges in the future will be forthcoming.

If you have any questions or further concerns with this matter, kindly contact me at the address listed above.

Respectfully,



Melanie Murray
Permit Coordinator
American Energy Corporation

AEC 12127

Analytical Summary and Comparison
Thickener Underflow Slurry
Century and No.6 Preparation Plants
American Energy Corporation and The Ohio Valley Coal Company
August, 2004

Description	AEC Thickener Underflow Slurry Characteristics	OVCC Thickener Underflow Slurry Characteristics	Units
Slurry Analysis:			
Specific Gravity of the Slurry	1.11	1.11	gms/cc
Specific Gravity of the Dry Solids	1.70	1.66	gms/cc
Percent Solids of the Slurry	24.80	25.90	% wt/wt
Percent Solids of the Slurry	28.02	28.73	% wt/vol
Solids Analysis:			
Ash	44.29	40.68	% Dry Basis
Total Sulfur	3.26	2.71	% Dry Basis
Pyritic Sulfur	1.75	1.58	% Dry Basis
Sulfate Sulfur	0.04	0.02	% Dry Basis
Organic Sulfur	1.47	1.11	% Dry Basis
British Thermal Units (BTU)	7,636	8,326	Per lb Dry Basis
Moisture Ash Free BTU	13,707	14,036	Per lb Dry Basis
Paste pH	8.19	8.01	S.U.
Neutralization Potential	44.4	19.8	Tons/1000 Tons
Potential Acidity (Based on Total Sulfur)	101.8	90.9	Tons/1000 Tons
Potential Acidity (Based on Pyritic Sulfur)	54.7	49.4	Tons/1000 Tons
CaCO3 Deficiency (Based on Total Sulfur)	57.4	71.1	Tons/1000 Tons
CaCO3 Deficiency (Based on Pyritic Sulfur)	10.3	29.6	Tons/1000 Tons
Size Distribution of Solids, (Tyler Series):			
Plus 8 Mesh	0.01	0.01	% by Wt
8 x 28 Mesh	2.57	1.05	% by Wt
28 x 60 Mesh	7.68	2.48	% by Wt
60 x 100 Mesh	3.76	4.54	% by Wt
100 x 150 Mesh	2.42	6.86	% by Wt
150 x 200 Mesh	2.36	5.37	% by Wt
200 x 325 Mesh	6.38	9.99	% by Wt
Minus 325 Mesh	74.82	69.70	% by Wt
Liquid Phase of Slurry Analysis:			
pH	8.47	8.11	S.U.
Total Acidity	Not Detected	7.73	mg/l as CaCO3
Total Alkalinity	300	186	mg/l as CaCO3
Total Iron	0.43	0.54	mg/l
Total Manganese	0.01	0.01	mg/l
Sulfates	600	162	mg/l